IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5882 OF 2005

Nashik Road Deolali Vyapari
Sahakari Bank .... Petitioner

versus

Zamandas Khusharam Mehtani & ors. ... Respondents.

Shri R.A.Thorat for the petitioner.
Shri M.M.Sathaye for Respondent.

CORAM; P.V. KAKADE, J.

DATED; FEBRUARY 20, 2006.

P.C:

1. Heard both the sides. Perused the record.

2. The petitioner has preferred this petition against the order passed by the Ad-hoc Addl.District Judge, Nashik dated 1sy July 2005 dismissing the application of the petitioner whereby application made by the petitioner/defendant under Order 41 Rule 23A of CPC came to be dismissed.

3. Admittedly the dispute between the parties is under the provisions of Maharashtra Rent Act. The trial Judge decreed the suit for eviction of the suit premises. against the present petitioner. The

petitioner preferred an appeal against the said decree and pending said appeal, application was filed contending that the respondent Jamnadas died and while bringing his legal representatives on record it was submitted that Jamnadas executed Will. The petitioner came out with a case that the said Will is not legal and which has been challenged and therefore the same will have to be proved and unless that will has been proved, it will not be decided as to who is the landlord of the suit premises and as such the application came to be filed under Order 41 Rule 23A of CPC.

4. The respondent challenged the petition on various grounds interalia submitting that the application was made for the purposes of delaying the proceedings and sought dismissal of the application. The lower appellate court after hearing both the parties, observed that it was a dispute between the landlord and the tenant and the petitioner's case is that unless the will is proved it will not be ascertained that who is the real owner of the suit premises and therefore requested for remand of the matter, was misconceived especially when the legal representatives of the deceased Jamnadas were on record and they accepted the will of Jamnadas. Therefore there was no issue in respect of the legality of the will involved in the

said dispute. Moreover, it is obvious that the present petitioner had no locus standi to challenge the said will and if the will was to be challenged, it was to be between the beneficiaries of the said will who were parties to the suit. In the circumstances, without further elaboration, I hold that the petition had no merits and as such deserves to be dismissed and stands dismissed with no order as to costs.

xxxx